IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

Date of decision: 16.04.2007

Criminal Appeal No. 1951 of 2001
(Old No. 1963 of 1990)

A.F.R. (Approved for Reporting)

Not approved for Reporting

(Initial of Judge)

Date: 16.04.2007

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 1951 of 2001
(Old No. 1963 of 1990)

1. Kishan Ram
   S/o Jalfram
2. Pani Ram
   S/o Dungar Ram
3. Har Ram, S/o Anram
4. Dev Singh, S/o Tika Singh
   All R/o Chalkia Sayat
   Patti Sayat, Tehsil and District Nainital
5. Chandan Singh, S/o Jeet Singh
   R/o Sayat, Patti Sayat, Tehsil and District Nainital …….Appellants

Vs.

State ……Respondent

Shri P.M.N. Singh, Sr. Advocate, assisted by Ms. Prabha Noliyal, learned counsel for the appellants.
Shri Amit Bhatt, learned A.G.A. for the State.

Coram: Hon'ble Prafulla C. Pant, J.
Hon'ble Dharam Veer, J.

[Per: Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), is directed against the judgment and order dated 12.10.1990, passed by learned Sessions Judge, Nainital, in Sessions Trial No. 231 of 1988, whereby appellants Kishan Ram, Pani Ram, Dev Singh, Har Ram and Chandan Singh have been convicted under Section 302 read with Section 149 Indian Penal Code, 1860 (for brevity

herein after referred as I.P.C.) and also under Section 147 I.P.C. Each of the five appellants, is sentenced under Section 302/149 I.P.C. to imprisonment for life and under Section 147 I.P.C. to rigorous imprisonment for a period of one year.

2. Heard learned counsel for the parties and perused the record.

3. Prosecution story in brief is that Suresh Chandra (deceased) was posted as Beldar with Kumaon Jal Sansthan (a public sector undertaking). He used to live in an official accommodation with his family in village-Chilkiya. On 03.07.1986, the deceased returned to his quarter after his duty at about 6:00 p.m. At about 7:00 p.m., accused/appellants Kishan Ram and Pani Ram, came there, called and took him with them. Shortly, thereafter shrieks of Suresh Chandra were heard from Chilkiya temple. On this, his wife P.W. 1 Smt. Gulachi Devi and neighbour P.W. 2 Puran Ram went towards said temple. When they reached near the temple they saw that the hands and legs of Suresh Chandra were tied with rope and accused/appellants-Kishan Ram and Pani Ram along with accused/appellants Har Ram (son of Anram), Dev Singh and Chandan Singh, were assaulting Suresh Chandra with lathies and dandas. The witnesses, namely P.W. 1 Gulachi Devi and P.W.2 Puran Ram

tried to intervene but the accused/appellants turned to attack them. Then both the witnesses went to P.W. 6 Dan Singh, a Fitter in the organization to which Suresh Chandra belonged. Gulachi Devi (P.W. 1) and Puran Ram (P.W. 2) along with P.W. 6 Dan Singh came back to the spot. However, by then Suresh Chandra had died. Thereafter, P.W. 1 Gulachi Devi and P.W. 6 Dan Singh went to Patti Patwari of the area to lodge the First Information Report. (In Uttarakhand hills in certain areas, revenue officials are given police powers). However, the Patwari was not found present at his headquarter. On this, Gulachi Devi and Dan Singh went to police out-post Kotabagh. P.W. 1 Gulachi Devi got scribed a written report (Ext. A-2) through P.W. 6 Dan Sing and submitted the same to P.W. 5 Sub-Inspector Roop Singh Bisht on the very day i.e. on 03.07.1986, at about 11=50 p.m. On the basis of said report, check report (Ext. A-3) was got prepared and an entry was made in the general diary, an extract of which is Ext. A-4. Sub-Inspector Roop Singh Bisht (P.W. 5), proceeded to the place of incident and saw that Suresh Chandra was lying dead with his hands and legs tied. Due to late night, he could prepare the inquest report (Ext. A-7) only on next morning i.e. 04.07.1986. He also prepared site plan (Ext. A-5) and took rope (Ext. 1) into his possession. Since the place of incident related to revenue police area, the Sub-Inspector Roop Singh

Bisht sent a wireless message to the Sub-Divisional Magistrate, Nainital on 04.07.1986. Meanwhile, dead body of the deceased was sent for post mortem examination. Dr. S.C. Pant, a Medical Officer in civil hospital, Haldwani, conducted autopsy on 04.07.1986 at about 2:00 p.m. and prepared post mortem examination report (Ext. A-1) (genuineness of this document admitted and formal proof is dispensed with by the defence). He found as many as 27 ante mortem injuries and opined that the deceased had died due to shock and haemorrhage, as a result of head injury. On 05.07.1986, under instructions of Sub-Divisional Magistrate, in absence of Patwari, the investigation was entrusted to P.W. 8 Shri Ani Ram, a Supervisory Kanoongo, who interrogated the witnesses, inspected the spot and prepared the site plan (Ext. A-17). He arrested the accused/appellants Dev Singh and Chandan Singh on 15.07.1986, and Kishan Ram, Pani Ram and Har Ram on 16.07.1986. On completion of the investigation, he submitted charge sheet (Ext. A-18) not only against the five accused named in the First Information Report but also against three others namely, Nain Singh, Gopal Ram and Hari Ram, son of Jaint Ram (These three were acquitted by the trial court).

4. On receipt of the charge sheet, it appears that learned Magistrate after giving necessary copies to

the accused, as required under Section 207 Cr.P.C., committed the case to the Court of Sessions for trial. Learned Sessions Judge, after hearing the prosecution and the defence, framed charge of offences punishable under Section 364 I.P.C. and 302 read with Section 149 I.P.C. against the accused/appellants Kishan Ram and Pani Ram. The trial court framed charge of offence punishable under Section 302/149 I.P.C. only against rest of the accused namely Dev Singh, Har Ram (son of An Ram), Chandan Singh, Nain Singh, Gopal Ram and Hari Ram (son of Jaint Ram). A separate additional charge of offence punishable under Section 147 I.P.C. was framed on 23.04.1990 against all the eight accused, named above. All the accused pleaded not guilty and claimed to be tried. Prosecution got examined P.W. 1 Smt. Gulachi Devi (informant and eye-witness), P.W. 2 Puran Ram (eye-witness), P.W. 3 Lachi Ram (declared hostile), P.W. 4 Bhawaan Singh (declared hostile), P.W. 5 Roop Singh Bisht (witness of inquest report), P.W. 6 Dan Singh (scribe of the report and who accompanied Gulachi Devi to police station), P.W. 7 Dharam Singh (declared hostile) and P.W. 8 Ani Ram (Supervisory Kanoongo, Investigating Officer). Apart from this, C.W. 1 Dr. S.C. Pant, who conducted autopsy on the dead body of deceased Suresh Chandra was also examined. The oral and documentary evidence was put to the accused persons regarding which they

alleged the same was false. In defence, no oral evidence was adduced but documents (Ext. B-1, copy of narrative prepared by Investigating Officer, Ext. B-2, letter dated 04.09.1986 of Naib Tehsildar addressed to the Investigating Officer, and Ex. B-3 another letter dated 11.06.1986 of Naib Tehsildar, addressed to Investigating Officer) were relied. After hearing the parties, the trial court found accused Kishan Ram, Pani Ram, Hari Ram (son of An Ram), Dev Singh and Chandan Singh, guilty of offence punishable under Section 147 I.P.C. However, charge of offence punishable under Section 364 I.P.C. was found not proved, as such, the accused Kishan Ram and Pani Ram, were acquitted of said charge. As against accused Nain Singh, Gopal Ram and Hari Ram (son of Jaint Ram), none of the charges framed were found proved, as such these three were acquitted of all the charges. After hearing on sentence, each one of the convicts Kishan Ram, Pani Ram, Har Ram (son of An Ram), Dev Singh and Chandan Singh were sentenced under Section 302/149 I.P.C. to undergo imprisonment for life. Each one of the five were also sentenced under Section 147 I.P.C. to undergo rigorous imprisonment for a period of one year. Aggrieved by said judgment and order dated 12.10.1990, passed by learned trial court, this appeal was preferred before Allahabad High Court from where it has been

received by transfer to this Court under Section 35 of U.P. Reorganisation Act, 2000.

5. Before further discussions, it is pertinent to mention here the ante mortem injuries found on the dead body of the deceased during post mortem examination. The autopsy report (Ext. A-1) read with the statement of C.W. 1 Dr. S.C. Pant, discloses following ante mortem injuries on the person of the deceased:-

1. Contusion 3cm X 1cm over left temporal region, 2cm lateral to left eye. Clotted blood present underneath.

2. Contusion 3cm X 1cm over mid of forehead. Clotted blood present.

3. Contusion 4cm X 3cm over right temporal region. Clotted blood present.

4. Two contusions 5cm X 0.5cm parallel to each other, 1cm apart over right lateral side of neck. Clotted blood present.

5. Two contusions 11cm X 0.5cm parallel and 1 cm apart over lateral side of right arm. Clotted blood present.

6. Contusion 4cm X 4cm over tip of right shoulder. Clotted blood present.

7. Contusion 10cm X 5cm over lateral aspect of right forearm. Clotted blood present.

8. Contusion around the right wrist with a groove.

9. Contusion 16cm X 9cm over lateral side of left arm. Clotted blood present.

10. Contusion 5cm X 1.5cm over left scapular. Clotted blood present.

11. Contusion 4cm X 1.5cm, 3cm below the injury No. 10. Clotted blood present.,

12. Contusion 8cm X 2cm over right scapula. Clotted blood present.

13. Contusion 8cm X 1.5cm over left side of back, 4cm below the injury No. 11. Clotted blood present.

14. Contusion 2cm X 0.5cm over mid of back. Clotted blood present.

15. Contusion all over lateral aspect of thigh. Clotted blood present.

16. Contusion 18cm X 10cm over back and medial aspect of left thigh. Clotted blood present.

17. Contusion 6cm X 1cm over left knee joint. Clotted blood present.

18. Contusion 5cm X 6cm anterior side of left leg. Clotted blood present.

19. Contusion 7cm X 0.5cm over back of left elbow. Clotted blood present.

20. Contusion 3cm X 2cm over post aspect of left forearm. Clotted blood present.

21. Contusion 4cm X 2cm over post aspect of left arm. Clotted blood present.

22. Contusion along with groove around the left wrist. Clotted blood present.

23. Two contusions 10cm X 0.5cm and 1cm apart over right side of abdomen. Clotted blood present.

24. Contusion all over right glutial region. Clotted blood present.

25. Contusion al over posterior and medial aspect of right thigh. Clotted blood present.

26. Two contusion 8cm X 0.5cm parallel 1cm apart and 6cm above the right knee joint. Clotted blood present.

27. Contusion 6cm X 0.5cm over left ankle joint. Clotted blood present.

On internal examination, Medical Officer found fracture of left temporal bone. There was haematoma under injuries No. 1 and 3. Dr. S.C. Pant, who prepared post mortem examination (Ext. A-1) after autopsy opined that the deceased had died due to shock and haemorrhage on account of injuries No. 1 and 3.

6. The two eye witnesses of the incident are P.W. 1 Gulachi Devi and P.W. 2 Puran Ram. P.W. 1 Gulachi Devi has stated that her husband was Beldar with Kumaon Jal Sansthan. She used to live with him in an official accommodation in village Chilkiya. On the day of the incident, at about 6:00 p.m., according to this witness, her husband (deceased) returned from the duty but at about 7:00 p.m. accused/appellants Kishan Ram, Pani Ram, came to her house and took her husband with them. After sometime, she was told by Puran Ram that some cries are coming from the side of Chilkiya temple. On this, she along with Puran Ram, went there and saw that her husband's hands and feet were tied. He was being beaten by the five accused with lathies. P.W. 1 Gulachi Devi, further states that when she asked accused to leave her husband, accused did not permit her to come near her

husband. On this, she went to Dan Singh, a Fitter in the same organization in which her husband used to work and informed about the incident. Thereafter, she along with Dan Singh came back to Chilkiya temple but by then her husband had already died. Lastly, in her examination in chief, P.W. 1 Gulachi Devi states that she went to lodge the First Information Report to Patwari but since he was not in his quarter, as such, the report (Ext. A-2) was thereafter lodged with police out-post Kotabagh.

7. Statement of the above witness gets fully corroborated by the statements of P.W. 2 Puran Ram (eye witness) and that of P.W. 6 Dan Singh. P.W. 2 Puran Ram has narrated the prosecution story, as mentioned above. He states that he knows accused Dev Singh, Chandan Singh, Har Ram, Pani Ram and Kishan Ram. P.W. 2 Puran Ram states that it was evening of 03.07.1986, when he returned from his duty and came to his quarter. The witness further states that he inquired from children of Suresh Chandra (deceased). They told him that he had been called by two persons. Meanwhile, some shrieks were heard on which he along with Gulachi Devi went towards Chilkiya temple from where the shrieks were coming. On reaching there, the witness states that he saw hands and feet of Suresh Chandra were tied with rope. The aforementioned five accused were beating him with lathies. P.W. 2 Puran

Ram further states that he also tried to save the deceased but the accused came to attack him. Thereafter, according to this witness, he along with Gulachi Devi went to Dan Singh, a Fitter and informed him about the incident. When they returned back to the spot, they found Suresh Chandra had died.

8. P.W. 6 Dan Singh has corroborated the fact that on 03.07.1986, Puran Ram and Gulachi Devi came to him at about 8:30 p.m. and told about the incident. This witness has further stated that he went along with Gulachi Devi to Chilkiya temple and saw that Suresh Chandra was dead, his hands and feet were lying tied. The witness further states, there were several injuries on the person of the deceased. P.W. 6 Dan Singh further states that thereafter he took Gulachi Devi to Patwari of the area but he was not present in the village. The witness further states that thereafter he took Gulachi Devi to police out-post Kotabagh, where Gulachi Devi lodged First Information Report (Ext. A-2), which was scribed by him.

9. P.W. 5 Sub-Inspector Roop Singh Bisht corroborating the testimony of P.W. 6 Dan Singh, has stated that on 03.07.1986, he was posted at police out-post Kotabagh and in his presence Gulachi Devi gave report (Ext. A-2) at the out-post

with regard to which a check report (Ext. A-3) was prepared by Constable Shiv Prasad Uniyal, who also made necessary entry (copy Ext. A-4) in the general diary at about 11:50 p.m. This witness has corroborated the fact that Gulachi Devi lodged the report before midnight on 03.07.1986 with the police out-post, as stated by her. P.W. 5 Sub-Inspector Roop Singh Bisht has proved the fact that he went to the spot, and next day in the morning i.e. 04.07.1986, after taking the dead body in his possession prepared inquest report (Ext. A-7). The witness has also stated that he took the rope (Ext. 1) by which hands and feet of the deceased were tied and prepared memorandum in this regard. This police official has stated that he also prepared letter to the Chief Medical Officer requesting for post mortem examination, sketch of the dead body, police form No. 13, police from No. 33 and sample seal (Ext. A-8 to Ext. A-12). P.W. 5 Sub-Inspector has also stated that he sent wireless message (Ext. A-13) to Sub-Divisional Magistrate on 04.07.1986, as the incident related to revenue police area.

10. On the basis of testimony of the witnesses, P.W. 1 Gulachi Devi, P.W. 2 Puran Ram and P.W. 6 Dan Singh read with the post mortem examination report (Ext. A-1), prepared by C.W. 1 Dr. S.C. Pant, this Court is in agreement with the trial court that charge of offence punishable under Section 147 and

that of 302/149 I.P.C. stand proved beyond all reasonable doubt against accused/appellants Kishan Ram, Pani Ram, Har Ram (son of Anram), Dev Singh and Chadan Singh. Though P.W. 3 Lachi Ram, P.W. 4 Bhawaan Singh and P.W. 7 Dharam Singh, were got declared hostile by the prosecution, as they have not narrated the entire prosecution story but his fact cannot ignored that P.W. 3 Lachi Ram has corroborated the fact that on the day of the incident when he reached at the spot, he found a dead body near Chilkiya temple with hands and feet tied. P.W. 4 Bhawaan Singh also states that when he reached near Chilkiya temple, he saw Suresh Chandra lying dead with his hands and feet tied. So is the case of P.W. 7 Dharam Singh, who too states that when he reached Chilkiya temple, he saw Suresh Chandra lying dead with his hands and feet tied. This witness has further stated that there were injuries on the person of the deceased. As such, even these three witnesses have corroborated the fact that dead body of Suresh Chandra was lying near Chilkiya temple and his hands and feet were tied. P.W. 8 Ani Ram (Supervisory Kanoongo), who investigated the crime has stated that he interrogated the witness and also prepared the site plan (Ext. A-17).

11. Shri P.M.N. Singh, learned counsel for the appellants, first of all argued that there are said to be

two First Information Reports and only one is produced in the court, as such, the contents of the First Information Report (Ext. A-2) cannot be treated to be true as the same might have been mentioned after due consultation to implicate the accused. The arguments, in our opinion is misconceived. In fact there are no two First Information Reports. What the witnesses P.W. 1 Gulachi Devi has stated is that first she went to lodge the First Information Report with the Patwari and since he was not present at his headquarter, she could not lodge the First Information Report. And she went to police out-post Kotabagh, where she got scribed the First Information Report and got it lodged. Ext. A-2 itself shows that it is addressed to police chowki Incharge, Kotabagh. There is nothing wrong in the conduct of P.W. 1 Gulachi Devi in getting scribed the report, and addressing to the proper person, where she was lodging the report. There is nothing on record to shows that First Information Report is lodged with Patwari. Apart from this she had no enmity with either of the five accused.

12. Second submission made on behalf of the appellants by Shri Singh, learned counsel, is that the First Information Report was sent to the Magistrate after two days in violation of provisions of Section 157 Cr.P.C. And as such, it cannot be ruled out that the said report is ante time. We are unable to accept

this submission for the reason that in the present case considering the geographical condition of the State, particularly in view of the fact that incident related to the area within the limits of revenue police, reaching of First Information Report late to the Magistrate cannot be said to be fatal to the prosecution case.

13. Third submission advanced on behalf of the appellants is that the statement of the informant and the witnesses were recorded by the Investigating Officer after much delay. Again the contention of learned counsel for the appellants, in our opinion is of no help to the accused to doubt the truthfulness of the prosecution story. There is sufficient explanation on the record that Patwari was not at his headquarter. The nearest police out-post was informed about the incident from where next day wireless message was sent to the Sub-Divisional Magistrate, where after Supervisory Kanoongo was directed to investigate the crime. Revenue police officials are not that trained investigating agency unlike regular police, as such if the interrogation of the witnesses has not taken place immediately after the entrustment of the investigation, it cannot be said that it creates any reasonable doubt as to the lodging of the First Information Report or contents thereof or the evidence adduced by the two eye-witnesses, namely P.W. 1 Gulachi Devi and P.W. 2 Puran Ram.

14. Next contention of learned counsel for the appellants is this that the conduct of Gulachi Devi and Puran Ram is unnatural, as from Chilkiya temple instead of calling the people from the near by locality, they had gone to a far of place to call Dan Singh (P.W. 6). In our opinion there is little force in this contention for the reason that Dan Singh is said to be a Fitter of the organization in which the deceased was working. It is natural that if some employee is attacked or has died, his family members would like to inform the next nearest official senior to the deceased. We cannot ignore the fact that it has come on record that the deceased belonged to eastern U.P., working in the District of Nainital.

15. It is also submitted on behalf of the appellants that the inquest report was not prepared on the very day by the police and in police form No. 13 (Ext. A-10), time to sending the dead body for post mortem examination is not mentioned. We have examined the evidence closely and have seen that there is nothing which creates any reasonable doubt in the prosecution story on this ground as from the post mortem examination report (Ext. A-1), it is clear that the autopsy was conducted on 04.07.1986 at 2:00 p.m. It has come on the record that just before midnight, on 03.07.1986, the report was lodged and in the night inquest report could not be prepared and

it was prepared only in the next morning i.e. on 04.07.1986. As such even if time is not mentioned in form No. 13, the autopsy conducted at 2=00 P.M. on 04.07.1986 itself shows that dead body was sent for autopsy without delay.

16. Lastly, it is argued that P.W. 1 failed to identify and distinguish between Hari Ram and Har Ram while making statement before the court. As we have mentioned earlier that the deceased belonged to eastern U.P. and working in Kumaon Jal Sansthan in village Chilkiya, it is quite possible that his wife (Gulachi Devi) did not know too many people in the village but statement of P.W. 2 Puran Ram, who was a local resident and who was all throughout with P.W. 1 Gulachi Devi at the time of incident, has correctly named and identified all the five accused/appellants in the court. As such, there is little substance in the argument advanced on behalf of the appellants. Also, it is pertinent to mention here that names of Kishan Ram, Puran Ram were disclosed by the husband of P.W. 1 Gulachi Devi to her, as stated by her in her cross examination that they had called him and thereafter when she heard shrieks from Chilkiya temple and reached there, she saw them (the two named above) along with Dev Singh, Chandan Singh and Har Ram (son of Anram), beating the deceased. The statement of the deceased, made to his wife Gulachi Devi that Kishan Ram and

Pani Ram had called him and he is coming back soon, is admissible under Section 32 of Indian Evidence Act, 1872.

17. Our attention was drawn on behalf of appellants to the case of ***State of Rajasthan Vs. Bhanwar Singh 2005 Supreme Court Cases (Cri) Pg. 73,*** and it is argued that the conduct of the five accused that they remained at the spot even after Gulachi Devi came back there with Dan Singh is most unnatural and as such her statement should not be believed. We have gone through the said case law. In the present case, houses of accused are infront of Chilkiya temple (place of incident) while in the aforementioned referred case, the facts and circumstances were different. As such the case law referred is of no help to the appellants.

18. For the reasons, as discussed above, we do not find any sufficient ground to interfere with the impugned judgment and order, passed by the trial court convicting the accused/appellants under Section 302 read with Section 149 I.P.C. and under Section 147 I.P.C. The trial court has given detailed reasons after discussing the entire evidence on record before coming to the conclusion that the five accused (present appellants) were found guilty. We are in agreement with the trial court that the charge of aforementioned offences is proved against the five

accused/appellants namely Kishan Ram, Pani Ram, Har Ram (son of Anram), Dev Singh and Chandan Singh. Therefore, this appeal is liable to be dismissed. The same is dismissed. The bail of the appellants is cancelled. The trial court is directed to take the accused appellants-Kishan Ram, Paniram, Har Ram, Dev Singh and Chandan Singh into custody to make them serve out the sentence, awarded against them.

(Dharam Veer, J.) **(Prafulla C. Pant, J.)**

Dt.16.04.07

Sweta